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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,044	03/12/2004	Courtney W. Turpen	653.02	8581

7590

10/03/2006

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EXAMINER

FETSUGA, ROBERT M

ART UNIT

PAPER NUMBER

3751

DATE MAILED: 10/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/800,044

Applicant(s)

TURPEN, COURTNEY W.

Examiner

Robert M. Fetsuga

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 03/24/06
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1, 4-7, 9 and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by DeVane.

The DeVane reference discloses a spa assembly comprising: a shell including a tub portion 10, a flange 12 and a spillway (Fig. 3); and plumbing elements including a suction 23 and a return 17, as claimed. Re claim 1, the shell is capable of being fitted into a gunite spa cavity as functionally recited, and in fact is supported in a cement cavity (swimming pool). Re claim 4, the "vacuum-formed" recitation is a product-by-process limitation which does not serve to limit the product claim. Re

claim 9, the flange is capable of allowing masonry components to be laid thereon as functionally recited.

Applicant argues at pages 10-11 of the response filed August 31, 2006 DeVane does not disclose a spillway as described in the instant specification. However, this argument does not appear to address the equivalence established between the claims and the DeVane disclosure. Claim 1 merely recites a spa assembly comprising, generally, a shell and plumbing elements. DeVane clearly discloses this subject matter. There is no "pool" recited as part of the combination set forth in claim 1, contrary to applicant's implications. The structure recited in applicant's claims is fully met by the DeVane disclosure.

3. Claims 1, 4-14 and 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holcomb and Craig et al.

The Holcomb reference discloses a spa assembly comprising: a shell including a tub portion 12 and a flange 13; and plumbing elements including a suction 19 and a return 18. Re claim 1, the shell is capable of being fitted into an existing spa cavity as functionally recited, and in fact is supported in a gunite cavity 37. Re claim 4, the "vacuum-formed" recitation is a product-by-process limitation which does not serve to limit the product claim. Re claim 6, the shell is considered to be "readily insertable and removable" in the same sense as with

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applicant's disclosed invention. Re claim 9, the flange is capable of allowing masonry components to be laid thereon as functionally recited, and in fact appears to be contemplated by Holcomb in the sentence bridging columns 2 and 3. Re claim 10, no sandbags are disclosed by Holcomb. Re claim 11, the flange is capable of receiving securing elements. Therefore, Holcomb teaches all claimed elements except for the provision of a spillway, and the provision of operating controls.

Although the shell of the Holcomb spa assembly does not include a spillway, as claimed, attention is directed to the Craig et al. (Craig) reference which discloses an analogous spa assembly which further includes a shell 18 having a spillway 50. Therefore, in consideration of Craig, it would have been obvious to one of ordinary skill in the spa assembly art to associate a spillway with the Holcomb shell in order to enable installation adjacent a swimming pool. Re claim 21, Craig also teaches the claimed subject matter as acknowledged at page 9 of the response.

Although the Holcomb spa assembly does not include operating controls, as claimed, attention is again directed to Craig which discloses operating controls C1. Therefore, in further consideration of Craig, it would have been obvious to one of ordinary skill in the spa assembly art to associate

operating controls with the Holcomb spa assembly in order to facilitate operation.

Applicant argues at pages 12-13 of the response the Holcomb and Craig disclosures are not combinable because they are completely different. The examiner can not agree. Both Holcomb and Craig disclose spa assemblies as reflected, for example, in the respective patent titles. Craig further discloses combining a spa and a swimming pool in a smoothly integrated manner. Note column 4, line 20 through column 5, line 43 in Craig. This disclosure in Craig also appears consistent with the discussion at pages 1-4 in the instant specification. Given these facts, it is the examiner's opinion one skilled in the spa/swimming pool art would find ample motivation to smoothly integrate the Holcomb spa into a swimming pool by associating a spillway with the spa.

4. Claims 2, 3, 15, 16, 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holcomb and Craig as applied to claims 1 and 9 above, and further in view of Price.

Although the shell of the Holcomb spa assembly does not include a notch, as claimed, attention is directed to the Price reference which discloses an analogous spa assembly which further includes a shell 17 having a notch 67. Therefore, in consideration of Price, it would have been obvious to one of

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ordinary skill in the spa assembly art to associate a notch with the Holcomb shell in order to enable tile installation.

Applicant argues at page 13 of the response the Holcomb, Craig and Price disclosures are not combinable because they are completely different. The examiner can not agree. Both Holcomb and Craig disclose spa assemblies as reflected, for example, in the respective patent titles. Craig further discloses combining a spa and a swimming pool in a smoothly integrated manner. Price teaches one how to install appearance-enhancing tiles on a swimming pool sidewall. Given these facts, it is the examiner's opinion one skilled in the spa/swimming pool art would find ample motivation to enhance the appearance of a swimming pool by providing a notch in the sidewall (shell) to receive tiles (masonry components). Further in this regard, it is the examiner's opinion a worker in the swimming pool art would readily recognize the applicability of perfecting swimming pool features to a spa. Indeed, a spa is mostly just a smaller version of a swimming pool. Both apparatus include circulating water systems in which a bather may be submerged.

5. The Craig et al. reference cited on the Information Disclosure Statement filed March 24, 2006 was lined out to avoid a duplicate citation.

6. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

7. The grounds of rejection have been reconsidered in light of applicant's arguments, but are still deemed to be proper.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886

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who can be most easily reached Monday through Thursday. The

Office central fax number is 571/273-8300.

A handwritten signature in black ink, appearing to read 'Robert M. Fetsuga', with a stylized flourish at the end.

Robert M. Fetsuga
Primary Examiner
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